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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 680 690

OGDEN H. HAMMOND, JR.,
Petitioner,

v.

CORDELL HULL ET AL.,
Respondents.

BRIEF FOR PETITIONER IN REPLY TO RESPONDENTS' BRIEF.

GEO. W. DALZELL,
Counsel for Petitioner.

DANIEL G. ALBERT,
WILBER STAMMLER,
Of Counsel.

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In their reply brief (Appendix, p. 21) respondents for the first time seek to introduce into the record a letter addressed to the Secretary of State by the Foreign Service Personnel Board on March 7, 1941, bearing the endorsement of the Secretary as of the same date.

This suit was begun March 18, 1941, and the letter and endorsement have been available to the respondents throughout the litigation and cannot have escaped their notice since they took the action upon which they now seek to rely only 11 days before the institution of the suit. This suit was pending in the District Court for 12 days and in the Court of Appeals for 18 months. As appears from page 47 of the petition here, petitioner was never advised of the existence of this endorsement, and, in fact, learns of it for

the first time from respondents' reply brief, although it was at all times within the knowledge and possession of the respondents. The attempt to introduce an additional defense (but not a newly discovered one) at this stage is merely another procedural error in addition to those enumerated at page 6 of the petition.

The authorities cited on pages 11 and 12 of respondents' reply brief do not support the introduction of belated evidence after a complaint has been dismissed, nor are they based on circumstances even remotely similar to the facts in this case.

Petitioner objects to the consideration by the court of this belated exhibit of which he had no previous knowledge.

GEO. W. DALZELL,
Counsel for Petitioner.

DANIEL G. ALBERT,
WILBER STAMMLER,
Of Counsel.